

APPEAL NO. 160115

FILED APRIL 4, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 28, 2015, in Houston, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to a disc bulge at L4-5; (2) the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by (Dr. R) dated December 15, 2014, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (3) the respondent (claimant) has not reached MMI; (4) because the claimant has not reached MMI, an IR cannot be determined at this time; (5) the claimant had disability from September 9, 2014, through the date of the CCH; and (6) the employer did not tender a bona fide offer of employment (BFOE).

The appellant (carrier) appealed all of the hearing officer's determinations, contending that those determinations were not supported by the evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), in the form of a lumbar and thoracic sprain, and that the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) for purposes of MMI and IR is Dr. R. The claimant testified she was injured when she threw out a bag of trash weighing approximately 60 to 70 pounds.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), extends to a disc bulge at L4-5 is supported by sufficient evidence and is affirmed.

BFOE

The hearing officer's determination that the employer did not tender a BFOE is supported by sufficient evidence and is affirmed.

FINALITY

The hearing officer's determination that the first certification of MMI and IR assigned by Dr. R dated December 15, 2014, did not become final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

MMI/IR

The hearing officer's determinations that the claimant has not reached MMI and because the claimant has not reached MMI, an IR cannot be determined at this time are supported by sufficient evidence and are affirmed.

DISABILITY

Disability means the inability to obtain and retain employment at wages equivalent to the pre-injury wage because of a compensable injury. Section 401.011(16). The claimant has the burden to prove that she had disability as defined by Section 401.011(16). Disability is a question of fact to be determined by the hearing officer. See Appeals Panel Decision (APD) 042097, decided October 18, 2004. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. APD 041116, decided July 2, 2004. The claimant need not prove that the compensable injury was the sole cause of her disability; only that it was a producing cause. APD 042097, *supra*.

The hearing officer found that during the period at issue (September 9, 2014, through the date of the CCH), the claimant was unable to obtain and retain employment at wages equivalent to her pre-injury wage as a result of the compensable injury, and therefore determined the claimant had disability from September 9, 2014, through the date of the CCH. However, the claimant testified that her last day of work for the employer was October 30, 2014, and that she worked as a janitor for the employer before and after the date of injury. The claimant did not offer any evidence to establish she was unable to obtain and retain employment at wages equivalent to her pre-injury wage as a result of the compensable injury from September 9 through October 30, 2014, the last day she worked for the employer. That portion of the hearing officer's determination that the claimant had disability from September 9 through October 30, 2014, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse that portion of the hearing officer's determination that the claimant had disability from September 9 through October 30, 2014, and we render a new decision that the claimant did not have disability from September 9 through October 30, 2014.

That portion of the hearing officer's determination that the claimant had disability from October 31, 2014, through the date of the CCH is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), extends to a disc bulge at L4-5.

We affirm the hearing officer's determination that the employer did not tender a BFOE.

We affirm the hearing officer's determination that the first certification of MMI and IR assigned by Dr. R dated December 15, 2014, did not become final under Section 408.123 and Rule 130.12.

We affirm the hearing officer's determinations that the claimant has not reached MMI and because the claimant has not reached MMI, an IR cannot be determined at this time.

We reverse that portion of the hearing officer's determination that the claimant had disability from September 9 through October 30, 2014, and we render a new decision that the claimant did not have disability from September 9 through October 30, 2014.

We affirm that portion of the hearing officer's determination that the claimant had disability from October 31, 2014, through the date of the CCH.

The true corporate name of the insurance carrier is **TRUMBULL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge